

Bolivia

Supreme Decree No. 28168 of 2005 - Transparency in the Management of Executive Power

UNOFFICIAL TRANSLATION

CONSIDERING

That the right of people to information, consisting of exercising the freedom to seek, receive and disseminate information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, artistic or by any another procedure of its choice, is recognized, in its individual aspect, in subsection b) of Article 7 of the Political Constitution of the State, which establishes the right to freely issue ideas and opinions by any means of dissemination, and, in its social aspect, as an implicit right, in its Article 35.

That the right to information is directly related to the fundamental right of people to formulate petitions individually or collectively, recognized in subparagraph h) of Article 7 of the Political Constitution of the State.

That the Universal Declaration of Human Rights, in its Article 19, establishes that: "Every individual has the right to freedom of opinion and expression; this right includes not being disturbed because of their opinions, of investigating and receiving information and opinions, and of disseminating them, without limitation of borders, by any means of expression. "

That the International Covenant on Civil and Political Rights indicates the need for States to guarantee the right of every person to freedom of expression, which includes the freedom to seek, receive and disseminate information and ideas without regard to borders, either orally, in written or artistic form, or by any other procedure of their choice.

That the American Convention on Human Rights stipulates that the right of expression may not be restricted by indirect means or means, such as the abuse of official or private controls of newsprint, of radio frequencies or devices used in the dissemination of information, or by any other means aimed at preventing communication and the circulation of ideas and opinions.

That Resolution No. 1932 adopted by the Organization of American States, in its plenary session of June 10, 2003, establishes that: "access to public information is an indispensable requirement for the very functioning of democracy, a greater transparency and good public management, and that in a democratic, representative and participatory system, citizens exercise their constitutional rights of political participation, voting, education and association, among others, through a broad freedom of expression and free acceso to information. "

That in a broad and inclusive democratic society the aspiration is the validity of a right to

communication and information that, corresponding to each and every one of the citizens, creates broader opportunities for the construction of their citizenship beyond the recognized freedoms of expression and thought.

That access to public information, in a timely, complete, adequate and truthful manner, is an indispensable requirement for the functioning of the democratic system and a fundamental pillar of transparent public management; particularly in access to information necessary to investigate crimes against humanity, human rights violations, crimes of economic damage to the State and acts of corruption.

That in this sense, at the proposal of the Presidential Anti-Corruption Delegation, it is appropriate to issue this regulation by fast track, within the framework of Chapter IX of Supreme Decree No. 27230 of October 31, 2003.

IN CABINET COUNCIL,
DECREE:

ARTICLE 1 (OBJECT).

The purpose of this Supreme Decree is to guarantee access to information, as a fundamental right of every person and transparency in the management of the Executive Power.

ARTICLE 2 (SCOPE OF APPLICATION).

The present Supreme Decree is applied in the scope of the Executive Power both centrally and decentralized, autonomous and decentralized; State companies and companies and companies with majority State participation. When the State does not have the majority participation, this Supreme Decree will be applied to the public or private servants that represent it, within the framework of its functions and competences.

ARTICLE 3 (PRINCIPLES).

The fundamental principles that guide access to public information are the following:

PUBLICITY: All information generated and owned by the Executive Branch belongs to the community and is public. People have the right of unrestricted access to it, except for exceptions expressly provided for by applicable laws.

Under no circumstances can information regarding the commission of crimes of humanity, human rights violations, corruption in the exercise of public functions and damage to the State be protected under secrecy, reservation or confidentiality.

OBLIGATORY: Every entity of the Executive Power has the obligation to deliver the information in a complete, adequate, timely and truthful manner, requested by any person, without inconvenience.

GRATUITY: Access to information is free. When reproduction costs exist, they will be covered by the applicant.

ARTICLE 4 (RIGHT TO INFORMATION).

The right of access to information is recognized to all people as a fundamental presupposition for the full exercise of citizenship and the strengthening of democracy.

ARTICLE 5 (LEGITIMATION).

In the exercise of the rights of information and petition, all natural or legal persons, individually or collectively, are entitled to request and receive complete, adequate, timely and truthful information from the Executive Power.

ARTICLE 6 (GUARANTEE OF ACCESS TO INFORMATION).

The Maximum Executive Authorities must ensure access to information to all people without distinction of any nature, establishing the structure and internal procedures of public entities under their dependence, which allow providing complete, adequate, timely and accurate information.

ARTICLE 7 (REGULATION OF EXCEPTIONS).

I. Access to information may only be denied in an exceptional and reasoned manner, only with respect to information that prior to the request and in accordance with current laws is classified as secret, confidential or confidential. This qualification will not be, in any case, discretionary of the public authority.

II. Once the secrecy, reservation or confidentiality has been lifted by the competent authority, in accordance with current laws, the information requested will be provided in a timely and preferential manner.

ARTICLE 8 (SECRET, RESERVED OR CONFIDENTIAL INFORMATION OF THE EXECUTIVE POWER).

I. Secret, confidential or confidential information of the Executive Power regarding the internal or external security of the State shall be subject to the following regime:

1. Indefinite maintenance of the supporting documentation.
2. Lifting of secrecy, confidentiality or confidentiality by order of competent authority.
3. Automatic lifting of secrecy, confidentiality or confidentiality of information, after twenty (20) years from the moment of the event generating the information.

II. The execution and control of the Budget of Specific Expenses of the Central Administration - 26100, will be subject to the provisions of the Supreme Decrees in force for that purpose.

ARTICLE 9 (MEDIA OF ACCESS TO INFORMATION).

People can access public information directly through electronic pages, publications or any other dissemination format; and indirectly, through the Information Unit that the

Maximum Executive Authorities will enable in each of the entities under their charge or through the existing Unit to which said Authority expressly delegates this function.

ARTICLE 10 (COMPULSORY PUBLICATION).

I. The entities included in the scope of application of this Supreme Decree must publish and update, through their respective electronic pages, the following minimum information, without this meaning that access to the remaining information is restricted:

- Budget approved by the General Treasury of the Nation.
- Payroll of public servants and permanent and temporary consultants, paid by the TGN or by other sources of financing.
- Main data of the contracts of goods, works and services and agreements concluded by the institution.
- Annual Operating Programs.
- Annual reports of budget execution.
- Annual Plans for the Contracting of Goods and Services sent to the State Contracting Information System - SICOES and updated reports on its execution.

II. The international conventions and treaties in force for the country, as well as the instruments related to their execution and validity, will be published in the Official Gazette of Bolivia.

III. The Ministry of Finance will publish on its website the structure and salary scales in force in the Institutions that make up the Executive Branch.

ARTICLE 11 (INDIRECT ACCESS).

I. The petitioners, duly identified, will request the information verbally or in writing to the Information Unit established for this purpose.

II. The responsible public servant will keep a record of all the applications presented. The information will be made available to the applicant within a maximum period of fifteen (15) business days, except in cases of justified refusal on the grounds established in this Supreme decree.

III. The justification of the request or the sponsorship of a lawyer for the presentation of applications will not be required.

ARTICLE 12 (FORMAT OF INFORMATION).

I. Every public entity has the obligation to provide the required information in written documents, photographs, recordings, magnetic or digital support, or in any other format,

provided that it has been created or obtained by it and that it is under its responsibility or scope of its competence.

II. The entity only has obligation to deliver the information in the state and form in which it is. The petitioner may not require a change of format or that the information be issued in a manner different from that which is stored or filed in the entity.

III. In accordance with the principle of gratuity, the petitioner who requires information must pay only the amount corresponding to the reproduction costs of the required information.

ARTICLE 13 (ADDITIONAL INFORMATION).

The request for information does not imply the obligation of the entity to create or produce information that does not count at the time the request is made.

ARTICLE 14 (PARTIAL INFORMATION).

In case a document contains partial information, the public entity must allow access to all the information that is available.

ARTICLE 15 (JUSTIFIED REFUSAL).

I. A justified refusal to the delivery of the information, can only be based on the following causes:

1. Secrecy, reservation or confidentiality expressly established in current laws, except in case of removal of this quality by competent authority, in accordance with the provisions of current regulations.
2. Absence of the information requested in the records or files of the entity.
3. Lack of competence to provide the information, when this corresponds to another entity.

II. The competent authority must communicate in writing to the petitioner its denial based on the preceding grounds, noting the limitations and reasons that justify the non-delivery of the information requested.

III. The authority should guide the petitioner, in writing, the possible destination or location of the information, when it does not exist in its files or records or is not within the scope of its competence.

ARTICLE 16 (UNDUE REFUSAL).

I. In case of undue refusal, lack of response or illegal restriction of the right to information, the petitioner may file a complaint with the competent superior authority or the Ombudsman, or make use of the constitutional, judicial and administrative remedies in force in the legal order.

II. The competent superior authority will resolve the complaint within a period of five (5) business days from its presentation. If the complaint is considered founded, within the maximum period of fifteen (15) business days, the information requested will be provided.

ARTICLE 17 (RESPONSIBILITY).

I. The public servants in charge of the compliance and execution of this Supreme Decree that incur in undue refusal, lack of response or illegal restriction in the attention of the requests for information, regardless of the administrative and civil responsibility that corresponds to them, will be liable criminal offense for breach of duties.

II. The higher administrative authority, known the fact, will file a complaint with the Public Ministry for the corresponding criminal action. The petitioner affected in his right may file a complaint with the same entity.

ARTICLE 18 (EXEMPTION OF SANCTIONS).

I. Compliance with the provisions of this Supreme Decree will not give rise to any type of sanctions against the persons who provide the requested information.

II. No natural or legal person, public or private, entity or means of communication that discloses the information obtained, may be subject to reprisals, administrative or judicial actions for the disclosure of information, including that indicated in Article 7 of this Supreme Decree and the Article 8 of this same rule when it is framed in the procedures and deadlines established for this purpose.

ARTICLE 19 (PETITION OF HABEAS DATA).

I. Any person, in the administrative process, may request from the authority in charge of the files or registries the updating, complementation, elimination or rectification of their registered data by any physical, electronic, magnetic or computer means, relating to their fundamental rights to the identity, privacy, image and privacy. In the same way, it may request the competent superior authority to access the information in case of unjustified refusal by the authority in charge of registration or public archiving.

II. The request for Habeas Data will be resolved within a maximum period of five (5) business days. In case of unjustified refusal of access to information, the competent hierarchical authority will additionally have a period of fifteen (15) business days to provide the information requested.

III. The petition of Habeas Data does not replace or substitute the Constitutional Appeal established in Article 23 of the Political Constitution of the State. The interested party may go, alternatively, to the administrative channel without its exercise entails waiver or loss of judicial means. Access to judicial channels will not be conditioned on the prior use or exhaustion of this administrative procedure.

ARTICLE 20 (MEASURES OF IMPLEMENTATION).

I. Every public entity must adopt administrative measures that guarantee and promote transparency and access to information. In this regard, adequate infrastructure, organization, systematization and publication of the information must be foreseen, within ninety (90) days following the date of publication of this Supreme Decree.

II. The Executive Branch will promote actions aimed at creating a culture of access to information in society through public awareness plans; training programs and updating of public servants; periodic evaluations and monitoring of compliance with and execution of this Supreme Decree.

III. The Ministry of Finance will authorize the corresponding budget items for the fulfillment and execution of this Supreme Decree.

ARTICLE 21 (VALIDITY OF RULES).

I. Supreme Decree N ° 27329 of January 31, 2004 is repealed.

II. The provisions contrary to this Supreme Decree are repealed. The Ministers of State in their respective Offices and the Presidential Delegate Anticorruption are in charge of the execution and fulfillment of this Supreme Decree.

It is given in the Government Palace of the city of La Paz, on the seventeenth day of the month of May of the year two thousand and five.